

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-0432-WR-E TCEQ ID: RN105388466 CASE NO.: 35541
RESPONDENT NAME: SONNTAG MATERIALS, INC.

Page 1 of 2

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER RIGHTS	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 6722 Rainey, Grandbury, Hood County

TYPE OF OPERATION: Sand and gravel mining operation

SMALL BUSINESS: ☒ Yes ☐ No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on January 12, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Jim Sallans, Litigation Division, MC 175, (512) 239-2053

Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Ms. Cheryl Thompson, Air Enforcement Section, MC R-4, (817) 588-5886

TCEQ Regional Contact: Mr. Sid Slocom, DFW Regional Office, MC R-4, (817) 588-5801

Respondent: Mr. Jimmy Sonntag, Registered Agent, P.O. Box 5348, Granbury, Texas 76049

Mr. Joe Sonntag, Director, Sonntag Materials, Inc., 706 Temple Hall Highway, Granbury, Texas 76049

Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: January 7, 2008</p> <p>Date of NOE Relating to this Case: February 29, 2008</p> <p>Background Facts: The EDPRP was filed on August 15, 2008 and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that the Respondent received notice of the EDPRP. The Respondent has failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: The Respondent has not completed Ordering Provisions and has not submitted an application for water rights.</p> <p>WR: Failed to obtain appropriate authorization prior to storing or diverting state water associated with its sand and gravel mining operation [30 TEX. ADMIN. CODE § 297.11 and TEX. WATER CODE § 11.121].</p>	<p>Total Assessed: \$1,875</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$1,875</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this proposed Order.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions: Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Immediately shall cease all unauthorized diversions of state water until such time that written authorization to use state water is obtained. 2. Within 15 days, submit written, notarized certification and include supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision 1.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision February 29, 2008

TCEQ

DATES	Assigned	3-Mar-2008	Screening	10-Mar-2008	EPA Due	
	PCW	13-Mar-2008				

RESPONDENT/FACILITY INFORMATION

Respondent	Sonntag Materials, Inc.		
Reg. Ent. Ref. No.	RN105388466		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	35541	No. of Violations	1	
Docket No.	2008-0432-WR-E	Order Type	1660	
Media Program(s)	Water Rights	Enf. Coordinator	Cheryl Thompson	
Multi-Media		EC's Team	Enforcement Team 3	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$5,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$1,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History **0% Enhancement** **Subtotals 2, 3, & 7** **\$0**

Notes No previous Compliance History.

Culpability **Yes** **25% Enhancement** **Subtotal 4** **\$375**

Notes The Respondent had a water agreement with Brazos River Authority, but the agreement was terminated on June 4, 2007.

Good Faith Effort to Comply **0% Reduction** **Subtotal 5** **\$0**

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary ☐
Ordinary ☐
N/A ☒ (mark with x)

Notes The Respondent does not meet the good faith criteria.

Total EB Amounts **\$18** **0% Enhancement*** **Subtotal 6** **\$0**
Approx. Cost of Compliance **\$500** ***Capped at the Total EB \$ Amount**

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$1,875**

OTHER FACTORS AS JUSTICE MAY REQUIRE **0%** **Adjustment** **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount **\$1,875**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$1,875**

DEFERRAL

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

No deferral due to culpability.

PAYABLE PENALTY **\$1,875**

Screening Date 10-Mar-2008

Docket No. 2008-0432-WR-E

PCW

Respondent Sonntag Materials, Inc.

Policy Revision 2 (September 2002)

Case ID No. 35541

PCW Revision February 29, 2008

Reg. Ent. Reference No. RN105388466

Media [Statute] Water Rights

Enf. Coordinator Cheryl Thompson

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

No previous Compliance History.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 10-Mar-2008 Respondent Sonntag Materials, Inc. Case ID No. 35541 Reg. Ent. Reference No. RN105388466 Media [Statute] Water Rights Enf. Coordinator Cheryl Thompson Violation Number <input type="text" value="1"/>	Docket No. 2008-0432-WR-E <div style="text-align: right;">PCW</div> <div style="text-align: right; font-size: small;"> Policy Revision 2 (September 2002) PCW Revision February 29, 2008 </div>																				
Rule Cite(s) <input style="width: 100%;" type="text" value="30 Tex. Admin. Code § 297.11 and Tex. Water Code § 11.121"/>																					
Violation Description <div style="border: 1px solid black; padding: 5px; min-height: 80px;"> <p>Failed to obtain a water right prior to using waters in the state. Specifically, the Respondent constructed a diversion apparatus for pumping and has been pumping water out of the sand pit operation at 6722 Rainey in Granbury, Texas without authorization. The sand pit is located adjacent to Lake Granbury and the water appears to be supplied by underflow from the Brazos River.</p> </div>																					
Base Penalty <input style="width: 100px;" type="text" value="\$5,000"/>																					
>> Environmental, Property and Human Health Matrix																					
OR	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;"></td> <td style="width: 10%; text-align: center;">Harm</td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> </tr> <tr> <td style="text-align: center;">Release</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> <td></td> </tr> <tr> <td style="text-align: center;">Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td></td> </tr> <tr> <td style="text-align: center;">Potential</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td></td> </tr> </table> <div style="text-align: right; margin-top: 5px;"> Percent <input style="width: 50px;" type="text" value="0%"/> </div>		Harm				Release	Major	Moderate	Minor		Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>		Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
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>> Programmatic Matrix																					
Matrix Notes	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;"></td> <td style="width: 10%; text-align: center;">Falsification</td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> </tr> <tr> <td></td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> <td></td> </tr> <tr> <td></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td></td> </tr> </table> <div style="text-align: right; margin-top: 5px;"> Percent <input style="width: 50px;" type="text" value="10%"/> </div> <div style="border: 1px solid black; padding: 5px; margin-top: 10px; min-height: 40px;"> 100% of the rule requirement was not met. </div>		Falsification					Major	Moderate	Minor			<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
	Falsification																				
	Major	Moderate	Minor																		
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Adjustment <input style="width: 100px;" type="text" value="\$4,500"/>																					
<input style="width: 100px;" type="text" value="\$500"/>																					
Violation Events																					
<div style="display: flex; justify-content: space-between;"> <div> Number of Violation Events <input style="width: 50px;" type="text" value="3"/> </div> <div> <input style="width: 50px;" type="text" value="63"/> Number of violation days </div> </div> <div style="margin-top: 10px;"> <div style="display: flex; align-items: center;"> <div style="width: 100px; font-size: small;"> mark only one with an x </div> <table border="1" style="width: 150px; border-collapse: collapse;"> <tr><td style="text-align: center;">daily</td><td><input type="text"/></td></tr> <tr><td style="text-align: center;">monthly</td><td><input checked="" type="text"/></td></tr> <tr><td style="text-align: center;">quarterly</td><td><input type="text"/></td></tr> <tr><td style="text-align: center;">semiannual</td><td><input type="text"/></td></tr> <tr><td style="text-align: center;">annual</td><td><input type="text"/></td></tr> <tr><td style="text-align: center;">single event</td><td><input type="text"/></td></tr> </table> </div> <div style="margin-left: 20px; text-align: right;"> Violation Base Penalty <input style="width: 100px;" type="text" value="\$1,500"/> </div> </div> <div style="border: 1px solid black; padding: 5px; margin-top: 10px; min-height: 40px;"> Three monthly events are recommended from the period of January 7, 2008 (date of inspection) to March 10, 2008 (date of screening). </div>		daily	<input type="text"/>	monthly	<input checked="" type="text"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input type="text"/>								
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single event	<input type="text"/>																				
Economic Benefit (EB) for this violation																					
<div style="display: flex; justify-content: space-between;"> <div> Estimated EB Amount <input style="width: 100px;" type="text" value="\$18"/> </div> <div> Statutory Limit Test </div> </div> <div style="margin-top: 10px;"> <div style="display: flex; justify-content: space-between;"> <div> Violation Final Penalty Total <input style="width: 100px;" type="text" value="\$1,875"/> </div> <div> This violation Final Assessed Penalty (adjusted for limits) <input style="width: 100px;" type="text" value="\$1,875"/> </div> </div> </div>																					

Economic Benefit Worksheet

Respondent: Sonntag Materials, Inc.

Case ID No. 35541

Reg. Ent. Reference No. RN105388466

Media: Water Rights

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$500	7-Jan-2008	30-Sep-2008	0.7	\$18	n/a	\$18

Notes for DELAYED costs

Estimated cost to obtain authorization for using waters in the state. Date required is the date of the investigation and final date is the projected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$18

Compliance History

Customer/Respondent/Owner-Operator: CN602555534 Sonntag Materials, Inc. Classification: AVERAGE Rating: 40.75
Regulated Entity: RN105388466 SONNTAG MATERIALS INC Classification: Site Rating:
ID Number(s):
Location: 6722 Rainey, Granbury, Texas
TCEQ Region: REGION 04 - DFW METROPLEX
Date Compliance History Prepared: March 11, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: March 11, 2003 to March 11, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Cheryl Thompson Phone: (817)588-5886

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

N/A

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

- F. Environmental audits.

N/A

- G. Type of environmental management systems (EMSs).

N/A

- H. Voluntary on-site compliance assessment dates.

N/A

- I. Participation in a voluntary pollution reduction program.

N/A

- J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
SONNTAG MATERIALS, INC.
RN105388466**

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§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2008-0432-WR-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE ch. 11 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Sonntag Materials, Inc. ("Sonntag Materials").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Sonntag Materials owns and operates a sand and gravel mining operation located at 6722 Rainey, in Grandbury, Hood County, Texas (the "Facility").
2. Sonntag Materials' Facility adjoins, is contiguous with or surrounds state water as defined in TEX. WATER CODE § 11.021.
3. During an inspection conducted on January 7, 2008 a TCEQ DFW Regional Office investigator documented that Sonntag Materials failed to obtain appropriate authorization prior to diverting state water associated with its operation of a sand and gravel mine.
4. Sonntag Materials received notice of the violation on or about March 5, 2008.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Sonntag Materials, Inc." (the "EDPRP") in the TCEQ Chief Clerk's office on August 15, 2008.

6. By letter dated August 15, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Sonntag Materials with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed". The first class mail has not been returned, indicating that Sonntag Materials received notice of the EDPRP.
7. More than 20 days have elapsed since Sonntag Materials received notice of the EDPRP, provided by the Executive Director. Sonntag Materials failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Sonntag Materials is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 11 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Sonntag Materials failed to obtain appropriate authorization prior to storing or diverting state water associated with its sand and gravel mining operation, in violation of 30 TEX. ADMIN. CODE § 297.11 and TEX. WATER CODE § 11.121.
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director has timely served Sonntag Materials with proper notice of the EDPRP, as required by TEX. WATER CODE § 11.0842 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
4. As evidenced by Finding of Fact No. 7, Sonntag Materials has failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 11.0842 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 11.0842 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Sonntag Materials and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 11.0842 the Commission has the authority to assess an administrative penalty against Sonntag Materials for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.

6. An administrative penalty in the amount of one thousand eight hundred seventy-five dollars (\$1,875.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 11.0842.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Sonntag Materials is assessed an administrative penalty in the amount of one thousand eight hundred seventy-five dollars (\$1,875.00) for violations of TEX. WATER CODE ch. 11 and rules of the TCEQ. The payment of this administrative penalty and Sonntag Materials' compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Sonntag Materials, Inc.; Docket No. 2008-0432-WR-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Sonntag Materials shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Sonntag Materials shall cease all unauthorized diversions of state water until such time that written authorization to use state water is obtained from the Brazos River Authority; and
 - b. Within 15 days after the effective date of this Order, Sonntag Materials shall submit written certification as described below, and include detailed supporting documentation to demonstrate compliance with Ordering Provision No. 2. a. The certification shall be

notarized by a State of Texas Notary Republic and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations"

Sonntag Materials shall submit all correspondence, reports, and documentation required by these Ordering Provisions to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

and

Water Section Manager
Texas Commission on Environmental Quality
Dallas/Fort Worth Regional Office
2309 Gravel Drive
Fort Worth, Texas 76118-6951

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Sonntag Materials. Sonntag Materials is ordered to give notice of this Order to personnel who maintain day-to-day control over the facility operations referenced in this Order.
5. If Sonntag Materials fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Sonntag Materials' failure to comply is not a violation of this Order. Sonntag Materials shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Sonntag Materials shall notify the Executive Director within seven days after Sonntag Materials becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Sonntag Materials shall be made in writing to the Executive Director. Extensions are not effective until Sonntag Materials receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Sonntag Materials if the Executive Director determines that Sonntag Materials has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF JIM SALLANS

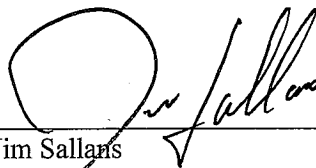
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

"My name is Jim Sallans. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Sonntag Materials, Inc." (the "EDPRP") with the Office of the Chief Clerk on August 15, 2008.

I sent the EDPRP to Sonntag Materials, Inc. at its last known address on August 15, 2008 via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed". The first class mail has not been returned, indicating that Sonntag Materials, Inc. received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

More than 20 days have elapsed since Sonntag Materials, Inc. received notice of the EDPRP. Sonntag Materials, Inc., failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference".

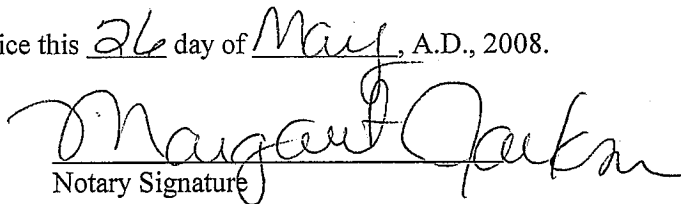
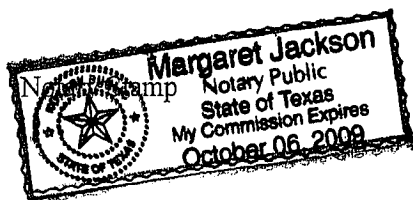


Jim Sallans
Attorney

Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jim Sallans, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 26 day of May, A.D., 2008.


Notary Signature